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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BRYAN E. ORSER, on behalf of himself
11 and others similarly situated

12 Plaintiff,

14 v.

15 SELECT PORTFOLIO SERVICING,
16 INC.,

17 Defendant.
18

NO. C 05-1507RSL

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

19 The Court, based on the facts of record, the submissions and argument of counsel, and being
20 otherwise fully advised in the premises, hereby makes the following:
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22 **FINDINGS OF FACT**

23 1. This case was filed on July 28, 2005 in King County, Washington Superior Court by
24 the Plaintiff, Bryan Orser (“Plaintiff” or “Orser”), as a putative class action to recover against
25 Defendant Select Portfolio Servicing, Inc. (“Defendant” or “SPS”) for breach of contract, unjust
26 enrichment, and violations of Washington’s Consumer Protection Act, RCW Chapter 19.86.
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28 2. SPS removed the matter to this Court on September 1, 2005.
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30 3. Plaintiff had a loan secured by a Deed of Trust on his residence that was serviced by

1 SPS. Plaintiff alleges that when he paid off his loan, SPS charged him a Payoff Statement Fee and
2 a recording fees not permitted by the Deed of Trust, or any other loan document. Plaintiff further
3 alleges that these fees were not secured by the Deed of Trust, and that SPS required him to pay these
4 fees before it would agree to reconvey the Deed of Trust, causing him to suffer money damages.
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6 4. On October 12, 2005, SPS moved to dismiss Plaintiff's Complaint under Fed. R. Civ.
7 P. 12(b)(6). The Court denied SPS's motion in its entirety on December 20, 2005.
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9 5. The parties engaged in discovery. Both parties propounded and answered
10 interrogatories and requests for production of documents, and both parties conducted depositions
11 of witnesses and parties.
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13 6. On December 21, 2006, the parties mediated their claims before Judge Terence
14 Lukens, Ret., of JAMS. The parties did not reach a settlement during the mediation.
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16 7. On January 17, 2006, Plaintiff moved for leave to file his First Amended Complaint,
17 to more specifically assert the facts supporting his claims. The Court granted the motion for leave
18 to amend on February 1, 2006, and the Amended Complaint was filed that same day.
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20 8. Beginning in approximately late Summer 2007, the parties began active settlement
21 negotiations. These settlement negotiations resulted in a settlement in principle in or about late
22 November 2007. The settlement in principle was expressly conditioned upon the negotiation and
23 execution of a mutually agreeable written settlement agreement and related documents.
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25 9. Over the course of approximately nine months, the parties drafted and negotiated the
26 Settlement Agreement and related documents. During this period, frequent additional negotiations
27 were necessary over specific terms and language of the Settlement Agreement and related
28 documents. The parties executed the original Settlement Agreement in November 2008.
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1 10. Plaintiff moved for preliminary approval of the settlement. On January 6, 2009, the
2 Court denied Plaintiff's Motion for Preliminary Approval, and identified several issues with the
3 Settlement Agreement that required further negotiation between the parties to resolve. Following
4 those negotiations, the parties reached agreement on, and executed, an Amended Settlement
5 Agreement on or about March 13, 2009.
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8 11. On March 17, 2009, Plaintiff moved for preliminary approval of the Amended
9 Settlement Agreement. The Court granted preliminary approval of the Amended Settlement
10 Agreement on April 14, 2009.
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12 12. In late May 2009, the parties discovered that Plaintiff may not have been a member
13 of the proposed Settlement Class as defined in the Amended Settlement Agreement. The parties
14 engaged in additional negotiations for, and executed, a modification of the Amended Settlement
15 Agreement to redefine the proposed Settlement Class. Plaintiff moved for approval of the
16 modification to the Amended Settlement Agreement. On July 27, 2009, the Court denied the motion
17 for approval of the modification to the Amended Settlement Agreement. The Court required
18 additional evidence that Plaintiff had standing to represent the redefined Settlement Class as Class
19 Representative. The Court additionally withdrew preliminary approval of the proposed settlement.
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22 13. On August 10, 2009, Plaintiff moved for reconsideration of the Court's July 27, 2009
23 Order denying approval of the motion to approve the modification to the Amended Settlement
24 Agreement and withdrawing preliminary approval of the proposed settlement. On August 14, 2009,
25 the Court granted the motion for reconsideration, thereby approving the redefined proposed
26 Settlement Class, again preliminarily approving the proposed settlement, and approving the form
27 of notice to the Class for the proposed settlement. The Order certified a Class, for settlement
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1 purposes, of:

2 All persons, excepting only Curry Settlement Class Members, who, during the period
3 from July 28, 1999 to September 1, 2008, paid a Payoff Statement Fee and/or
4 Recording Fee to Select Portfolio Servicing, Inc. (f/k/a Fairbanks Capital Corp.) In
5 connection with a Loan secured by real property located in the State of Washington,
6 excepting only those Curry Settlement Class Members who were charged a Payoff
Statement Fee and/or Recording Fee by SPS prior to December 11, 2003.

7 Plaintiff Bryan Orser was appointed as Representative for the Settlement Class, and Mark Griffin
8 of Keller Rohrback L.L.P.; Rob Williamson of Williamson & Williams; and Guy W. Beckett of
9 Beckett Law Offices, PLLC were appointed Class Counsel.
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11 14. SPS does not have complete information available concerning which Class Members
12 paid Payoff Statement Fees and how much in recording fees each Class Member paid. Not all Class
13 Members paid Payoff Statement Fees and the recording fees paid by Plaintiff, and if they did, the
14 amounts they paid may not have been the same amounts paid by Plaintiff. Plaintiff paid a \$50
15 Payoff Statement Fee and recording fees of \$53. Pursuant to the proposed settlement, SPS created
16 a Settlement Fund of \$330,00, from which would be paid (1) Claims of Class Members; (2)
17 Settlement Administration expenses (up to \$20,000); Class Counsel's fees and expenses (up to an
18 aggregate of \$102,500); and the Class Representative's incentive fee. Any portion of the \$330,000
19 fund not distributed for any of these categories will be paid to a non-profit organization selected by
20 SPS which is reasonably acceptable to Class Counsel and the Plaintiff, and approved by the Court.
21 Pursuant to the proposed Settlement, each Class Member who timely returned a properly completed
22 Claim Form will receive a \$50 payment from the Settlement Fund.
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24 15. The Settlement Administrator mailed notice of the proposed settlement to all 11,459
25 Class Members. 2,045 notices were returned to the Settlement Class Administrator, and of those
26 returns, 44 envelopes had forwarding address information and notice was resent to the new address
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1 for those 44 notices. The remaining 2,001 returned notices were not remailed. The notices informed
2 Class Members that Class Counsel would be seeking an award of up to \$102,500 for attorney's fees
3 and expenses.
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5 16. As of November 25, 2009, 850 valid and timely Claim Forms had been returned to
6 the Settlement Administrator by Class Members. In addition, as of November 25, 2009, 38 invalid
7 Claim Forms had been returned to the Settlement Administrator by Class Members. The postmark
8 deadline for Valid Claim Forms has been extended up to and including November 30, 2009. This
9 increases the number of valid and timely Claim Forms returned to the Settlement Administrator to
10 866. In addition, Class Counsel may, at their sole discretion and cost, contact those Class Members
11 who submitted incomplete Claim Forms postmarked on or prior to November 30, 2009, to provide
12 them the opportunity to properly complete their Claim Forms. Those Class Members shall have
13 until December 31, 2009 to submit Valid Claim Forms to the Settlement Administrator, and such
14 Claim Forms shall be deemed timely if postmarked on or before December 31, 2009, and otherwise
15 meet the criteria for a Valid Claim Form.
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20 17. Only two Class Members opted out of the proposed settlement. There have been no
21 objections filed or served by any Class Members to the proposed settlement or the attorney's fees
22 and expenses payable thereunder. No objection to an award of compensation to the Plaintiff as Class
23 Representative has been filed or served by any Class Member.
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25 18. The lodestar value of Class Counsel's time, billed at their regular rates, was
26 \$351,974.80 as of December 1, 2009.
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28 19. During the course of this litigation, Class Counsel has advanced costs and expenses
29 in the total amount of \$11,455.26 as of December 1, 2009. This amount does not include Westlaw
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1 legal research charges that were incurred for this case by Beckett Law Offices, PLLC and
2 Williamson & Williams. To date, none of these costs and expenses has been reimbursed to Class
3 Counsel. In addition, Class Counsel has incurred unreimbursed expenses of at least \$12,866.58 for
4 other cases based on similar facts and legal theories, which they state has benefitted the Plaintiff in
5 this case.
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8 20. Class Counsel undertook this action without participation by any other firm and was
9 solely responsible for its outcome.
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11 21. The Class Representative, Bryan Orser, responded to discovery and was deposed, and
12 assisted with the prosecution of this lawsuit.

13 22. The Court is satisfied that its knowledge of the proceedings, including discovery,
14 motions to amend, to dismiss, for preliminary approval of the proposed settlement, for
15 reconsideration, and for final approval of the proposed settlement, and the briefing and argument
16 related thereto, is adequate for purposes of considering the reasonableness of Class Counsel's fee
17 request.
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20 From the foregoing Findings of Fact, the Court hereby makes the following:

21 **CONCLUSIONS OF LAW**
22

23 1. Class Counsel's petition for an attorneys' fee award of \$82,500.00, which is 25% of
24 the Settlement Fund, is reasonable and is approved.

25 2. This fee award satisfies the lodestar cross-check because it amounts to only about
26 23% of the lodestar amount of fees incurred by Class Counsel in prosecuting this case.
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28 3. Class Counsel's request for an award of \$20,000 for expenses incurred is not
29 approved. Class Counsel have submitted declarations to show that they have advanced costs and
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1 expenses in the total amount of \$11,455.26 as of December 1, 2009. Their request for costs and
2 expenses of \$11,455.26 is fair and reasonable under the circumstances and is approved. However,
3 the Court will not award the full \$20,000 requested because Class Counsel have not shown that they
4 incurred that amount of costs and expenses. Although Class Counsel cites cases in which courts
5 have awarded additional fees for work performed in other cases that benefitted the current case, they
6 have not cited cases in which courts approved excess costs and expenses on that basis. Furthermore,
7 the excess costs and expenses are not documented or substantiated. Rather, Class Counsel vaguely
8 assert that they incurred additional expenses related to computerized research and request that the
9 Court extrapolate their costs from what other counsel incurred. The Court will not award costs and
10 expenses that could have been, but were not, substantiated. Nor will the Court award all three
11 plaintiffs' law firms the same costs for legal research, which could improperly reward the
12 duplication of efforts.

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17 4. An award of \$5,000 to the Class Representative, Bryan Orser, is fair and reasonable
18 under the circumstances and is approved.

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20 5. After the claims administrator is paid out of the Settlement Fund and claims are paid
21 to Class Members, the remainder of the Settlement Fund will be paid to a non-profit organization
22 selected by SPS that is reasonably acceptable to Plaintiff and Class Counsel. SPS should obtain
23 Court approval before delivering any portion of the Settlement Fund to the *cy pres* recipient and
24 shall
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1 file a report with the Court accounting for all distributions from the Settlement Fund.
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4 DATED this 2nd day of December, 2009.
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9 Robert S. Lasnik

10 United States District Judge
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